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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 9th November 2011

No. 10065—li/1 (B)-106/1997-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 13th October 2011 in Industrial Dispute Case No. 78/1998 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of M/s.Palliseva Samabaya Samiti, Baranga and its Workman Shri Choudhury Rama Chandra Das, Ex-Secretary was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 162 OF 2008
(Previously registered as I. D. Case No. 78 of 1998
in the file of the Presiding Officer, Labour Court, Bhubaneswar)
The 13th October 2011

Present :

Shri Raghubir Dash, O. S. J. S. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The President, Palliseva Samabaya Samiti, . . . First-party Management
At Baranga, P. O. Kotion,
Dist. Jagatsinghpur.

And

Shri Choudhury Rama Chandra Das, . . . Second-party Workman
At Baranga, P. O. Kotion,
Dist. Jagatsinghpur.

Appearances :

Shri D. K. Swain, Advocate	. . .	For the First-party Management
Shri S. B. Das, Advocate	. . .	For the Second-party Workman

AWARD

This is a reference under Section 10 of the Industrial Dispute Act (for short, 'the Act') made by the Government of Orissa in the Labour & Employment Department vide their Order No. 8559—li/1(B)-106/1997-L.E., dated the 12th August 1998 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Industrial Tribunal for adjudication vide Labour & Employment Department's Order No. 4138—li/21-32/2007-L.E., dated the 4th April 2008. The Schedule of Reference runs as follows :

"Whether the termination of service of Shri Choudhury Rama Chandra Das, Secretary, by the management of M/s. Palliseva Samabaya Samiti, Baranga with effect from the 21st July 1993 is legal and/or justified ? If not, to what relief Shri Das is entitled ?"

2. The first-party herein is a Co-operative Society registered under the Co-operative Societies Act, 1962. It is not in dispute that the second-party workman was appointed as the Secretary of the Society and he had been working as such since, dated the 10th March 1984. While he was in service under the first-party he was directed on the 16th August 1992 by his Competent Authority to work as the Secretary of Sabuja Biplava Krushi Jantriya Samabaya Samity (for short, 'the Samity') on deputation basis.

3. It is the case of the second-party that after completion of the period of deputation he submitted joining report on the 21st July 1993 to join in his original post. The first-party accepted his joining report and he continued to work but the Management of the first-party did not pay salary to him. Therefore, the second-party filed a case under Section 33-C(2) of the Act. In that proceeding the first-party for the first time took the plea that the services of the second-party had been terminated with effect from the 21st July 1993. It is further alleged that the termination of service is not in accordance with the provisions contained in the Act and that the first-party has employed another person to work in his place who is still continuing.

4. The stand taken by the first-party is that the second-party was appointed as a non-cadre Secretary and he had been working as such till the 16th August 1992 when he was relieved from the Society and thereafter, he is no more in the services of the first-party Society. It is denied that the joining report of the second-party was accepted by the first-party and he was allowed to continue in the establishment of the first-party with effect from the 21st July 1993 on the other hand, it is claimed that the second-party was not allowed to join as he failed to comply with the terms and conditions of a Resolution passed by the General Body of the Society on the 10th October 1992 (The first-party has nowhere mentioned it in the written statement as to what is the Resolution that was passed on the 10th October 1992). Thus, according to the first-party, the services of the second-party was never terminated by the first-party and that the joining report submitted by the second-party was rightly not accepted.

In addition to the aforesaid contention it is also pleaded that neither the second-party is a 'Workman' nor the first-party is an 'industry'.

5. In this case the following issues have been framed :—

ISSUES

- (i) "Whether the termination of service of Shri Choudhury Rama Chandra Das, Secretary by the Management of M/s. Palliseva Samabaya Samity, Baranga with effect from the 21st July 1993 is legal and/or justified ?
- (ii) If not, to what relief Shri Das is entitled ?"

6. The second-party has examined three witnesses. W. W. No. 1 is the then President of the Samity where under the second-party had served as the Secretary on deputation. W. W. No. 2 is a retired Assistant Registrar of Co-operative Societies, Jagatsinghpur. W. W. No. 3 is the workman himself. On behalf of the Management, one witness is examined as M. W. No. 1 who is working as the Assistant Secretary of the Society.

FINDINGS

7. *Issue Nos. (ii) & (iii)*—There is no dispute that the workman was an employee of the first-party management and that under an order of his Competent Authority he was sent on deputation to work as the Secretary of the Samity. Ext. 6 is the order of permission accorded by the Assistant Registrar, Co-operative Societies, Jagatsinghpur Circle (for short, 'the A. R. C. S.') to accept the services of the workman on deputation basis for a period of one year unless otherwise extended or revoked. Ext. A is the Resolution, dated the 16th August 1992 passed by the Managing Committee of the first-party to the effect that since the Workman had taken over the charge of the Secretary of the Samity, the Assistant Secretary, Prafulla Chandra Rout, was to act temporarily as the Secretary of the first-party Society for one year. It is not in dispute that on the 16th August 1992 the second-party joined in the Samity to work on deputation and on completion of one year of deputation he submitted his joining report to the first-party on the 21st July 1993. Ext. 10 is a copy of the order, dated the 20th July 1993 passed by the President of the Samity relieving the second-party from his duties from the establishment of the Samity with effect from the 20th July 1993. Thus, it is found that after the workman was relieved by the Management of the Samity he submitted his joining report before the first-party on the 21st July 1993.

8. It is not denied that the joining report of the second-party was not accepted by the first-party. M. W. No. 1 says that when the second-party submitted his joining report a Resolution was passed by the Managing Committee of the first-party and as per the Resolution the second-party was asked to obtain permission and clearance from the A. R. C. S. In the written statement the first-party has taken the stand that on the failure of the second-party to comply with the terms and conditions of the Resolution, dated the 10th October 1992 passed by its General Body the joining report of the second-party was not accepted. This has been repeated in various paragraphs of the written statement but the Management has not proved the Resolution, dated the 10th October 1992. It is also not clarified in the written statement as to what are the terms and conditions of the said Resolution which the second-party failed to comply. The permission accorded by the A. R. C. S. vide Ext. 6 was subject to conditions, *inter alia*, that if the deputationist at any time expressed his unwillingness to continue on deputation he might come back to his parent post i. e., the post held under the first-party and that the lien of service in the parent post of the deputationist would continue and during the period of deputation the Management of the first-party would make temporary arrangement for its Secretary. It is not shown by the first-party that the period of one year of deputation was subsequently extended by an order of the A. R. C. S. Since the workman had the lien of service in his parent post and since he was relieved by the Samity wherein he was working on deputation his joining report should have been accepted by the first-party. Since the deputation of the second-party was under an order passed by the A. R. C. S. the Management has not claimed to have obtained any order from the A. R. C. S. not to allow the second-party to join in his parent post. Be that as it may, the Management ought to have accepted the joining report of the second-party and in case he had violated any terms and conditions of his service, disciplinary action ought to have been taken against him. Mere refusal to accept his joining report amounts to denial of employment which is tantamount to termination of service. It is not claimed that the services of the

second-party were terminated in terms of the provisions contained in the Act. It is also not denied that the Management had engaged another person as its Secretary by the time the second-party submitted his joining report. Therefore, it is to be presumed that his parent post was still in existence. Yet, the management refused employment to him. Therefore, the termination of service of the second-party is neither legal nor justified. The Management relies on some Resolutions passed by the Managing Committee/General Body of the first-party which are marked Exts. B and C. But, the Resolution made by the Managing Committee/General Body does not legalise the termination of service of the second-party by way of refusal of employment.

9. Though it is claimed by the first-party that the first-party is not an 'industry' and the dispute between the Society and its employees cannot be brought under the purview of the Act, the legal position has been settled by our Hon'ble High Court in Bhanjanagar Co-operative Urban Bank Ltd. *Vrs. S. Jagannath Rao*, 1974 Lab. I. C. 291 wherein it is held that a Co-operative Bank which is covered under the Orissa Co-operative Societies Act, 1962 is an 'industry'. It is also not shown by the Management that the Secretary of the Society is employed mainly in a managerial or administrative capacity. Therefore, the contention that the second-party is not a 'workman' is not considered at length.

10. The termination of service having been found to be illegal, the second-party is entitled to the relief of reinstatement with full back wages. However, during the pendency of this I. D. Case the workman has reached the age of superannuation. He is now more than 70 years old. Therefore, the relief of reinstatement cannot be Awarded in his favour. In the facts and circumstances, the second-party is found entitled to his salaries and other service benefits that he would have been entitled to get from the date of refusal of employment till the date of his superannuation. Accordingly, Award is made in favour of the second-party. The first-party to implement the Award within a period of two months of the date of its publication in the Official Gazette, failing which it will be liable to pay interest @ 8% per annum on the amount he is entitled to get under this Award.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
13-10-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH
13-10-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor
T. K. PANDA
Under-Secretary to Government

